

A Guide to Offers in Settlement

2002



Frequently Asked Questions



Preparing an Offer



Department of Revenue Resources



Massachusetts Department of Revenue

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Dear Taxpayer:

A major part of our effort to provide a fair and efficient system of tax administration is our commitment to keep taxpayers informed of their rights and responsibilities under the law, including how to resolve questions concerning a taxpayer's tax liability. One option available to taxpayers is an Offer in Settlement that allows the Department of Revenue to accept less than the full payment in certain circumstances that would be in the best interests of both the taxpayers and the Commonwealth.

The purpose of this guide is to provide answers to the most frequently asked questions about Offers in Settlement. In addition to explaining under what circumstances an Offer in Settlement may be considered, the guide includes a worksheet designed to help you determine how much to offer, as well as resources for getting tax help.

We hope you find this guide helpful and encourage you to contact the Collections Bureau hotline at (617) 887-6400 if you need further assistance.

Sincerely,

A handwritten signature in black ink that reads "Alan LeBovidge". The signature is written in a cursive, flowing style.

*Alan LeBovidge
Commissioner of Revenue*

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Introduction

This guide contains general information about the Department of Revenue's Offer in Settlement process. It describes under what circumstances an Offer may be considered, how to prepare an Offer and what happens if an Offer is accepted or rejected.

A Guide to Offers in Settlement is designed to lead you through the basics of the Offer process by explaining what an Offer in Settlement is, how to calculate a reasonable amount to offer, as well as how the Department evaluates an Offer.

This guide is part of an ongoing series of publications that the Department of Revenue has produced to keep the public informed about Massachusetts tax law. If you have further questions about Offers in Settlement, please call the Department's Collections Bureau hotline at (617) 887-6400.

Frequently Asked Questions About Offers in Settlement

What is an Offer in Settlement?

An Offer in Settlement (OIS) is a proposal between a taxpayer and the Department of Revenue (DOR) to resolve the taxpayer's tax liability. DOR has the authority to settle state tax liabilities by accepting less than full payment under certain circumstances.

Am I eligible for consideration of an Offer in Settlement?

DOR may legally settle for one of the following reasons (applicable Massachusetts General Law cited):

- *Question of liability ("I don't owe the tax"). Doubt exists that the assessed tax is correct (M.G.L. c. 62C, § 37C). You must submit a Form DR-1, Request for Settlement Consideration, which is sent to the DOR Office of Appeals, explaining why you do not believe the tax liability, or portion thereof, is owed. Financial statements are not required when submitting a Form DR-1. Form DR-1 is the official application used when requesting a settlement based on a question of liability.*
- *Doubt as to collectibility ("I can't pay the tax"). Doubt exists that you could ever pay the full amount of tax owed (M.G.L. c. 62C, § 37A). You must submit:*

a. Form M-656, Offer in Settlement. This is the official form requesting an Offer in Settlement based on collectibility only. Substitute forms will not be allowed.

b. Form M-433, Statement of Financial Condition.

Forms can be obtained by calling (617) 887-6400 or by visiting the DOR website at www.mass.gov/dor. It is recommended that you contact the Department prior to filing an Offer to discuss your case with an examiner.

*The focus of this guide is to provide information on Offers in Settlement **only** where there is a doubt as to collectibility. Any questions of liability must be resolved prior to addressing issues of collectibility.*

When am I not eligible for consideration of an Offer in Settlement?

You are not eligible for consideration of an Offer in Settlement on the basis of doubt as to collectibility if:

- *You have not filed all state tax returns.*
- *You are involved in an open bankruptcy proceeding.*
- *Your liability is currently being appealed (Abatement, Appellate Tax Board, civil proceeding, etc.).*
- *You have filed Form DR-1, Request for Settlement Consideration, to question the tax liability.*

What does DOR need to process an Offer in Settlement?

In order for DOR to process your Offer in Settlement you must submit the following:

- *Form M-656, Offer in Settlement. This is the official form requesting an Offer in Settlement based on collectibility only. Substitute forms will not be allowed. (**Note:** Any alteration of the language on Form M-656 will result in a delay in the processing of the Offer.)*
- *Form M-433, Statement of Financial Condition.*
- *Form M-2848, Power of Attorney (if applicable).*
- *Form OIS/AB (if applicable).*
- **Signed** *copies of the most current three years of federal corporate and/or individual tax returns, all schedules, W-2s and 1099s attached.*

Completed OIS packages should be sent to the Department of Revenue, PO Box 7021, Boston, MA 02204. The OIS Unit will contact you for any required information that has been omitted. Failure to respond to an OIS request for information will result in your Offer being rejected.

How to Prepare an Offer in Settlement

Complete your financial statement

You must submit current financial information that reflects your financial situation for at least the past 12 months. DOR will verify the information, but it will also be useful to you in determining how much DOR may expect you to offer to settle your tax liability.

Financial statements must show all your assets and income, even those unavailable to DOR through direct collection action, because you can use them to fund your Offer in Settlement. The OIS examiner needs this information to evaluate your Offer and may ask you to update or verify certain financial information. DOR will reject Offer packages that do not contain complete financial information.

Please be sure to include all your assets and income and to properly disclose any asset transfers (e.g., transfer of real estate to a spouse or children or to a trust). The law requires that the Commissioner of Revenue determine that you have not acted with intent to defraud before a settlement can be entered into. Failure to disclose this information may prevent DOR from accepting any Offer in Settlement.

Determine your Offer amount

Once you have completed the financial statement, proceed to the following worksheet to calculate a minimum Offer amount. DOR will use the formula shown as a starting point and may require a higher amount based on other financial factors.

The minimum amount for an Offer in Settlement to be considered is 20% of the existing liability or \$5,000. Offers that do not meet these criteria are generally considered frivolous and are rejected.

Every effort should be made to offer the maximum amount your financial situation allows. Your Offer in Settlement should accurately reflect your financial condition that consists of your net equity, income and future earning potential.

Minimum Offer Worksheet

Cash and investment accounts **A** _____

Real estate

Equity in real estate owned (determine for each property individually)

Current fair market value _____

Value of liens with priority over Massachusetts tax liens (list) _____

Net real estate equity **B** _____

Automobiles

Quick sale value of automobiles owned (determine for each automobile separately)

Current fair market value _____

Liens on title (list) _____

Net vehicle equity **C** _____

Other assets

Current fair market value _____

Liens on other assets (list) _____

Net other asset equity **D** _____

Cash flow

Monthly income (from M-433) _____

Monthly expenses (from M-433) _____

Monthly cash flow _____

Net cash flow \times **48 months** **E** _____

(A + B + C + D + E) **F** _____

20% of the current tax liability due **G** _____

Projected minimum Offer (greater of F or G) _____

Determine your payment proposal

Your Offer amount can be a lump sum payment or installment payments. DOR encourages lump sum payments. The length of time necessary and the uncertainty of your ability to complete the installment payments are factors in this decision. DOR may reject an installment Offer where there is doubt about the source of funds for future payments (e.g., payments that are contingent on the sale of a business). When installment payments are proposed in settlement, the decision to accept or reject the Offer will be based on the present value of those payments, discounting at the current interest rate charged for unpaid taxes under M.G.L. c. 62C, § 32. (**Note:** Liens are not released until the Offer amount is fully paid.)

Estimated Current Value (ECV) of your Offer:

	Payment amount	Discount factor	ECV ($P \times D$)
Immediate payment.	_____	1.0	_____
Installments due in 1st year	_____	0.9	_____
Installments due 1–2 years	_____	0.8	_____
Installments due 2–3 years	_____	0.7	_____
Installments due after 3 years . . .	_____	0.6	_____
Total estimated current value for Offer evaluation	_____		_____

Note: The discount factor shown above is provided for illustration only. The discount rate is based on historical DOR interest rates. The actual payment stream will be discounted at the current interest rate when the Offer is evaluated.

For settlements that require installment payments, the agreement will provide that, in addition to the payments to be made by you, DOR retains the right to intercept any state and federal tax refunds that may otherwise be due you until the installment payments are completed. Additionally, for agreements lasting more than one year, DOR may require that the agreement include a provision for you to pay a percentage of your income above a certain amount (generally 150% of current income) in addition to the amounts proposed as part of the settlement. This provision, if included, would provide that you must pay the additional amounts if your income rises dramatically prior to completion of the Settlement Agreement.

In no event will these provisions require that you pay more than the full amount that would have been due if there had been no Settlement Agreement.

After an Offer is Filed

Processing your Offer

An Offer examiner will evaluate your Offer and may request additional information or documentation from you to verify your financial position or to provide you an opportunity to explain anything uncovered by DOR's independent review of your financial status.

The examiner will consider your Offer in the context of DOR's published guidelines. You may be given the opportunity to amend your Offer or to provide more detailed information about why the amount you proposed is the most that you can pay. The examiner will then make a recommendation to accept or reject the Offer. If rejected, you may refile an Offer, but only with a significant change in the Offer amount or a material change in your financial condition.

Suspension of collection activities

DOR will suspend most collection activities while your Offer is being considered. This does not apply if DOR determines that you submitted your Offer to delay collections or if a delay will jeopardize DOR's ability to collect the tax.

While DOR will not levy you while an Offer is pending, the suspension of collection activities will also not apply to the interception of state and federal refunds that may be due you or to discovery activities (including, but not limited to, the assessment of additional taxes that may be due and the determination of who may be personally responsible for non-payment of trustee taxes).

If you are currently on a payment agreement when you submit an Offer, you should continue making the agreed upon monthly payments while DOR considers your Offer. If you discontinue making these payments and your Offer is rejected, you will be required to make up any missing payments to reinstate the agreement.

Suspension of the Statute of Limitations on collection

By signing Form M-656, you consent to the extension of the Statute of Limitations on collection for all tax periods owed during the period your Offer is under consideration. Altering any part of Form M-656, will delay the processing of your Offer with no suspension of collection activity.

If DOR accepts your Offer

If two Deputy Commissioners are prepared to recommend acceptance of your Offer to the Commissioner of Revenue, DOR will notify you by mail and send you a Settlement Agreement to sign. At this point, acceptance is very likely but the Commissioner will only review the Agreement after you have signed and returned the documents.

When you receive your Settlement Agreement you must:

- *Sign the four enclosed copies of the Agreement and return them to DOR. All four copies must be returned. You will receive a copy of the Agreement once it has been approved by the Commissioner and re-viewed by the Attorney General (if required).*
- *Promptly pay any unpaid amounts that became due under the terms of the Agreement. If the Agreement is for a lump sum, the full amount must be remitted at this time. This payment will be held in escrow until the Commissioner has approved the Agreement and the Attorney General has had the opportunity to review the Agreement (if required).*
- *Comply with all terms and conditions of the Agreement, along with those of any additional agreement.*

DOR will release all Notices of DOR Tax Lien(s) when you satisfy the payment terms of the Settlement Agreement. No lien(s) will be released until all payments are made under the terms of the Agreement.

Failure to meet the terms of the Installment Settlement Agreement (i.e., not making future payments, not filing returns or paying taxes when due) will result in the default of that Agreement. If you default on your Settlement Agreement, DOR will reinstate the unpaid amount of your tax liability and resume collection activities.

DOR will not default your Settlement Agreement when you have filed a joint Offer with your spouse or ex-spouse as long as you have kept or are keeping all terms of the Agreement, even if your spouse or ex-spouse violates future compliance provisions.

Note: *Massachusetts General Laws require DOR to make all Settlement Agreements available for public inspection. In addition, information regarding your Settlement Agreement will be published in the DOR's Annual Report.*

If DOR rejects your Offer

DOR will notify you by mail that your Offer has been rejected. The letter will explain the reason(s) for the rejection. Also, collection activities will resume immediately. If your Offer is rejected, you have the right to:

- *Appeal the decision to the Problem Resolution Office.*
- *Submit another Offer. For a new Offer to be considered, you must either significantly increase the amount offered or demonstrate a material change in your financial condition.*

Commonly Requested Forms and Publications



DOR's Fax on Demand

(617) 887-1900

+ fax code number

DOR offers a number of forms and publications on various state tax issues. Most are available by visiting the DOR website at www.mass.gov/dor or by calling DOR's main information lines at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089. Many of the documents below also are available through DOR's Fax on Demand system. Please call (617) 887-1900 using the handset and the keypad of your fax machine for a complete menu, or use the code number following the document title below. Only forms followed by a fax code number may be obtained through Fax on Demand.

<i>Form Number</i>	<i>Title/Fax Code</i>
<i>DR-1</i>	<i>Request for Settlement Consideration/402</i>
<i>M-433</i>	<i>Statement of Financial Condition</i>
<i>M-656</i>	<i>Offer in Settlement/401</i>
<i>M-2848</i>	<i>Power of Attorney and Declaration of Representative/348</i> <i>Instructions for Completing Form M-2848/848</i>

Publication Title/Fax Code

A Guide to the Department of Revenue: Your Taxpayer Bill of Rights/3005

Guide to Filing Your Massachusetts Income Taxes/3010

A Guide to Withholding of Taxes on Wages/3007

Should You Be Paying Estimated Taxes?/3008

A Guide to Sales and Use Tax/3009

A Guide to Sales Tax on Meals/3012

A Guide to Estate Taxes (Applicable to dates of death prior to January 1, 1997)/3011

A Guide to Estate Taxes (Applicable to dates of death on or after January 1, 1997)/3013

Taxpayer Advisory Bulletin is published quarterly with updates on legislative, legal and Departmental decisions and is available on the DOR website at www.mass.gov/dor.

DOR Regulations, Technical Information Releases, Directives and Letter Rulings are prepared on general tax issues as well as specific taxpayer inquiries and are available on the DOR website and Fax on Demand system, or by calling DOR's Rulings and Regulations Bureau at (617) 626-3250. Copies also are published in the **MASSTAX Guide**.

Registration Packet contains registration materials for business taxpayers, tax information, sample forms and informational guides, and is available by calling (617) 887-6400.

MASSTAX Guide contains five volumes covering all state taxes and DOR administrative procedures; it is available for purchase through West Group (1-800-328-9352) or for reference at many law libraries and at the State House Library.

What kind of help is available?

The instructions in the forms discussed in this guide should provide answers to most taxpayer questions. Personal assistance is available by calling the Collections Bureau hotline at (617) 887-6400.



*If you have questions,
call DOR's Collections
Bureau Hotline at
(617) 887-6400*

*DOR also issues a number of useful publications on various state tax issues. These publications include: tax-specific guides written in question and answer format such as **A Guide to the Department of Revenue: Your Taxpayer Bill of Rights**; a quarterly newsletter, the **Taxpayer Advisory Bulletin**; and public written statements that explain the Commonwealth's tax laws in detail.*

Where to get forms and publications



To obtain Massachusetts tax forms and publications by phone, call the Department's main information lines at (617) 887-MDOR or toll-free in Massachusetts at 1-800-392-6089. Please note that many forms and publications are available 24 hours a day by calling the Department's automated forms request system at the numbers listed above.



Many Massachusetts tax forms and publications also are available via the Department's website at www.mass.gov/dor.



Certain forms and publications can be obtained through DOR's Fax on Demand system. A list of commonly requested forms and publications and their fax codes appears on pages 15 and 16. For a complete Fax on Demand menu, please dial (617) 887-1900 using the handset and the keypad of your fax machine.

The purpose of this publication is to provide taxpayers with general information about Massachusetts tax laws and Department of Revenue policies and procedures as of July 1, 2002. It is not designed to address all questions in detail, and taxpayers are encouraged to seek further guidance as described throughout this guide. Nothing contained within this publication supersedes, alters or otherwise changes any provisions of Massachusetts General Laws, Massachusetts Department of Revenue Regulations or Rulings or any other sources of the law.

Department of Revenue

*Toll-free in Massachusetts: **1-800-392-6089***

*Online: **www.mass.gov/dor***